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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,295	02/26/2004	John W. Clapper JR.	21365	3436
7590 04/06/2007 Peter N. Lalos Stevens, Davis, Miller & Mosher, LLP Suite 850 1615 L Street, NW Washington, DC 20036-5622			EXAMINER TORRES, ALICIA M	
			ART UNIT 3671	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/06/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	10/786,295		CLAPPER, JOHN W.	
	Examiner		Art Unit	
	Alicia M. Torres		3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Risch 5,111,602 in view of Heiple et al. 6,209,237 and Wilson 3,325,926.
3. Regarding claims 1-7 and 16, Risch discloses a grappling assembly for a machine having a boom, comprising:
 - A dipper stick (30) pivotally connected to a boom (not shown)
 - An implement (44) connected to the dipper stick (30)
 - Means (38) for moving the implement (44) relative to the dipper stick (30)
 - An arm (50a,b) connected to the underside of the dipper stick (30) and movable between a grappling position and an inoperative position
 - Means (16a,b, 38) for pivoting the arm (50a,b) relative to the dipper stick (30)
 - Means (59, 66a,b) for detachably latching the arm (50a,b) in the inoperative position including the arm (50a,b) having a transversely extending recess (66a,b), as per claim 1; and
 - The means (16a,b, 38) for moving the arm (50a,b) is receivable within the arm (50a,b) when the arm (50a,b) is inoperative, as per claim 2; and

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- The means (16a,b, 38) for pivoting the arm comprising a fluid actuated cylinder (38), as per claim 3;
- The arm (50a,b) having a jagged edge (25), as per claim 7.

However, Risch fails to disclose wherein the latching means includes the dipper stick having a yieldably biased, transversely displaceable protuberance tripable upon engagement by the arm and receivable in the recess when the arm member is pivoted between the operative and the inoperative position;

wherein in the inoperative position, the arm member is disposed along an underside of the dipper stick;

wherein the means operatively interconnect underside of the dipper stick and the arm member, as per claim 1; and

- The protuberance has a curved outer surface and biased by a spring seated in the dipper stick, as per claim 4; and
- a bracket having a pair of outwardly, yieldingly biased protuberances
- recesses registerable with the protuberances in a snap-fit manner, as per claim 5; and
- the biasing force exerted on the protuberance sufficient to yieldably bias the protuberance in the recess yet insufficient to retain the protuberance therein upon pivoting from the inoperative to the grappling position, as per claim 6; and

wherein said member having said recess includes an element disposed in a plane perpendicular to the pivotal axis of said arm member and including said protuberance biased in an extended position, engageable with said protuberance in camming relation to cause said

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protuberance to displace and then be inserted into said recess when said arm member is angularly displaced to said inoperative position, as per claim 16.

Heiple et al. discloses a similar grappling assembly including an arm member (30) interconnected to the underside of the dipper stick (10, at 34) such that in an inoperative position, the arm member (30) is disposed along an underside of the dipper stick (10).

Wilson teaches the use of a pair of outwardly, yieldingly biased protuberances (54) and recesses (43) registerable with the protuberances (54) and triable upon engagement by the piece (26) and receivable in the recesses (43); and

- The protuberance (54) has a curved outer surface (see the embodiment 41 of Figure 4) and biased by a spring (52) seated in the bracket
- a bracket having a pair of outwardly, yieldingly biased protuberances (54)
- recesses (43) registerable with the protuberances (54) in a snap-fit manner
- the biasing force (by spring 52) exerted on the protuberance sufficient to yieldably bias the protuberances (54) in the recesses (43) yet insufficient to retain the protuberances (54) in response to pivoting.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the arm member location of Heiple et al. on the device of Risch in order to avoid interference with the bucket operation.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the connection of Wilson on the device of Risch in order to securely retain parts of an excavation device.

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4. Regarding claims 8-15, Risch discloses an assembly comprising:

- An arm (50a,b) connected to the underside of the dipper (30)
- Means (16a,b, 38) for pivoting the arm (50a,b) for grappling objects
- Means (59, 66a,b) for detachably latching the arm (50a,b) in the inoperative position including the arm (50ab) having a transversely extending recess (66a,b), as per claim 8; and
- The means (16a,b, 38) for moving the arm (50a,b) is receivable within two elongated plate members of the arm (50a,b) when the arm (50a,b) is inoperative, as per claims 9 and 14;
- The means (16a,b, 38) for pivoting the arm comprising a fluid actuated cylinder (38), as per claim 10;
- the biasing force exerted on the protuberance sufficient to yieldably bias the protuberance in the recess yet insufficient to retain the protuberance therein upon pivoting from the inoperative to the grappling position, as per claim 13; and
- The arm (50a,b) having a jagged edge (25), as per claim 15.

However, Risch fails to disclose a second member having a yieldably biased, transversely displaceable protuberance tripable upon engagement by the one of the arm and receivable in the recess when the arm member is pivoted between the operative and inoperative positions; and

the means for pivoting the arm member being mounted on the underside of the dipper stick, as per claim 8; and

a curved button protuberance receivable in the recess, the button biased outwardly by a spring, as per claim 11; and

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- a bracket having a pair of outwardly, yieldingly biased protuberances
- recesses registerable with the protuberances in a snap-fit manner, as per claim 12.

Heiple et al. discloses a similar grappling assembly wherein the means (34, 35) for pivoting the arm member (30) is mounted on the underside of the dipper stick (10).

Wilson teaches the use of a pair of outwardly, yieldingly biased curved button protuberances (54, see embodiment 41 of Figure 4) and recesses (43) registerable in a snap-fit manner with the protuberances (54) and trippable upon engagement by the piece (26) and receivable in the recesses (43), a spring (52) biasing the protuberances (54).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the arm member location of Heiple et al. on the device of Risch in order to avoid interference with the bucket operation.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the connection of Wilson on the device of Risch in order to securely retain parts of an excavation device.

DETAILED ACTION

5. Regarding the applicant's discussion that Wilson fails to teach a trippable latching means, as the examiner has pointed out, upon engagement of the arm member with the dipper stick, the detent disclosed by Wilson is trippable by inward pressure by a user or operator. The dictionary (www.dictionary.com) definition of "trip" is to operate, start or set free by suddenly releasing a catch, clutch or the like. Therefore, the fact that Wilson's detent is tripped manually is moot

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since when a user applies pressure to the detent, the user is doing the operating as per the definition.

6. Furthermore, the examiner would like to point out that the swinging arm is already disclosed by Risch. The Wilson reference is used to modify Risch's latch, showing that the trippable detent is already known in the art as a connection means. That being said, Wilson's "inoperative position" is when the tooth is engaged to the support member, and the "operative position" is when the two are detached from each other.

7. Lastly, in response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

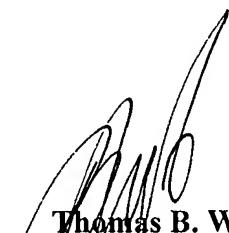
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 571-272-6997. The examiner can normally be reached Monday through Friday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 571-272-6998.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 571-272-3600. The fax number for this Group is 571-273-8300.



Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

AMT
March 31, 2007